

taking to administer and enforce effectively its inconsistent requirement.

[Amdt. 107-3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107-22, 55 FR 39978, Oct. 1, 1990; Amdt. 107-24, 56 FR 8621, 8623, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991; Amdt. 107-23, 56 FR 66156, Dec. 20, 1991; Amdt. 107-25, 57 FR 20428, May 13, 1992; Amdt. 107-32, 59 FR 49131, Sept. 26, 1994; Amdt. 107-38, 61 FR 21099, May 9, 1996]

§ 107.217 Notice.

(a) The applicant shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person who is reasonably ascertainable by the applicant as a person who will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application to the Associate Administrator within 45 days. The application filed with the Associate Administrator must include a certification that the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the State or political subdivision determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application filed with the Associate Administrator a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Associate Administrator may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of the section is not impracticable, or that notice should be published in the FEDERAL REGISTER. Late-filed comments are considered so far as practicable.

(d) The Associate Administrator may notify any other persons who may be

affected by the outcome of a determination on the application.

(e) Any person submitting written comments to the Associate Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant. The person shall certify to the Associate Administrator that he has complied with the requirements of this paragraph. The Associate Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

[Amdt. 107-3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; Amdt. 107-25, 57 FR 20429, May 13, 1992; Amdt. 107-38, 61 FR 21099, May 9, 1996]

§ 107.219 Processing.

(a) The Associate Administrator may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Associate Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Associate Administrator on his or her own initiative may convene a hearing or conference, if he or she considers that a hearing or conference will advance his or her evaluation of the application.

(b) The Associate Administrator may dismiss the application without prejudice if:

(1) He or she determines that there is insufficient information upon which to base a determination;

(2) Upon his or her request, additional information is not submitted by the applicant; or

(3) The applicant fails to provide the notice required by § 107.217.

(c) Except as provided in § 107.201(c), the Associate Administrator will only consider an application for a waiver of preemption determination if:

(1) The applicant State or political subdivision thereof or Indian tribe expressly acknowledges in its application that the State or political subdivision thereof or Indian tribe requirement for which the determination is sought is